

REMARKS

Claims 28-47 were pending in the application. Claims 1-47 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,539,421 to Applemann et al. (“Applemann”) in view of U.S. Patent Publication No. 2002/0184391 to Phillips (“Phillips”). Thus, claims 28-47 remain pending in the application.

Initially, Applicants respectfully point out that claims 1-27 were canceled in the amendment filed on October 15, 2004. Accordingly, the rejection of claims 1-27 is improper and should be withdrawn.

Furthermore, Applicants submit that Phillips is not prior art to the present application. Phillips is a U.S. Patent Publication based on an application for patent in the United States filed on June 5, 2001. The present application was filed on January 11, 2002. Therefore, Phillips is only available as prior art under 35 U.S.C. § 102(e) with an effective date of June 5, 2001. Both Phillips and the present application are owned or were under obligation to assign ownership to the same organization, in this case, Motorola Inc., at the time of invention. Both Phillips and the present application were assigned to Motorola Inc., the assignment of the present application was recorded at Reel 12501, Frame 0946. Because “[S]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person,”¹ Phillips is not prior art to the present application under 35 U.S.C. § 103. Therefore, the rejection of claims 28-47 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

¹ 35 U.S.C. § 103(c). See also M.P.E.P. 706.02(l)(2)

The examiner is encouraged to contact the applicants' undersigned attorney with any questions regarding this response or the application as a whole. Since the application is in a condition for allowance, such action is requested at the examiner's earliest convenience.

If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855. Applicants respectfully request reconsideration and withdrawal of the rejection of the claims at issue and allowance thereof.

Respectfully submitted for,

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